

REMARKS

The Office Action has been reviewed and reconsideration of the above-identified application in view of the following amendments and remarks, is respectfully requested

Claims 1-18 are pending and stand rejected.

Claims 1, 4, 7, 10, 13 and 16 are independent claims.

Claims 1, 2, 4, 5, 7, 8, 10, 11, 13, 14, 16, and 17 have been amended.

The claims are objected to for including language not found in the Specification. Claims 1-18 stand rejected under 35 USC 103(a) as being unpatentable over Salmonsen (USP no. 7, 209, 874) in view of Sato (USPPA 2003/0041123) further in view of Pak (USPPA 2004/0267790) and further in view of Silen (USPPA 2002/0116518).

With regard to the objection to the claims including language not disclosed in the specification, applicant respectfully disagrees with and explicitly traverses the objection. However in order to advance the prosecution of this matter and to present the subject claimed in better form, the claims have been amended to refer to "content available for downloading" rather than "downloaded content."

No new matter has been added. Support for the amendment may be found on page 5 ("content requiring downloading") and on page 6 ("content needed to be downloaded").

Hence, adequate support is believed to exist in the specification to support the term "content available for downloading" as the terms "requiring" and "needed to be" represents the availability of the content for downloading.

With regard to the rejection of claims 1-18 as being unpatentable over Salmonsen, Sato, Pak and Silen, applicant respectfully disagrees with and explicitly traverses the rejection of the claims.

In maintaining the rejection of the claims, the Office Action asserts “that the quality menu is not displayed to the user and that there is no interaction between the user and said quality menu. Thus the Examiner interprets said quality menu as rendering information. Sato disclosed (re. Claim 1) reading a pre-stored content providing additional information regarding a content of said downloaded content;(Sato-Paragraph 46- Paragraph 47, the optical disk contains the disk ID and address information indicating website from which the content is downloaded from). However while Sato disclosed pre-stored content providing the URL address of the content source Sato did not disclose pre-stored content including a quality menu.

Pak Paragraph 39 disclosed adjusting the download process based on the user rendering device capabilities (Paragraph 34) such as hardware specifications, resolution, display size, and number of channels. Furthermore Pak figure 7 disclosed a content database containing different rendering options for each particular content requested by the user. The Examiner notes that the combination of resolution, display size, and number of channels represent the equivalent of a rendering quality, and the multiple rendering options are the equivalent to a quality menu.

The Examiner notes that the time of the invention it was well-known to provide rendering options on a DVD and that storing additional information regarding the content on a DVD is also well-known.”

With regard to the interpretation of quality being comparable to rendering options, applicant respectfully disagrees. Applicant submits that content of different qualities may have different rendering requirements but the quality, as recited in the claims, is related to a bandwidth requirement and not rendering requirements (of the device). For example, for a Blu-ray Disc player there are certain minimum rendering requirements, and there may be two entries in the quality menu with exactly the same rendering requirements e.g. two streams with the same video resolution and same frame rate using the same compression

system (e.g. MPEG-2) but with much different bit rates (bandwidth) due to the choice of compression parameters. From a rendering point of view these two streams are identical but from a quality point of view they are different.

Hence, it is believed that the interpretation of quality provided in the Office Action is incorrect.

In addition, with regard to the assertion that the combination of resolution, display size and number of channels represent the equivalent of a rendering quality and the multiple rendering options are the equivalent to a quality menu,” applicant respectfully disagrees. For example, in the case of Blu-ray Disc, every player needs to support certain rendering options (as in Pak, these are fixed in the device) but the quality menu recited in the claims is in addition to the options available in the player. Thus, the subject matter claimed in the quality menu is independent of the rendering capabilities of the device and quality menus include entries that refer to the bandwidth limitations of the network.

Even if it may be assumed that the combination of resolution, display size and number of channels represent the equivalent of a rendering quality and the multiple rendering qualities are the equivalent to a quality menu, recited in the claims, the combination of the cited references cannot disclose the claim element of “monitoring the available bandwidth to adjust a quality of the combined ~~downloaded content available for downloading and the pre-stored content.~~”

More specifically, as the resolution, display size and number of channels are physical attributes associated with the player unit, these values are not variable. Thus, as the bandwidth is altered, the player unit cannot adjust the rendering parameters (resolution, display size and number of channels) accordingly. Thus, even if there were a monitoring function of the bandwidth, the quality of the content available for downloading cannot be adjusted based on the monitored bandwidth.

Applicant further repeats, as if in full herein, his characterization of the cited references and the arguments presented in the prior Office Action response.

Thus, for the remarks made above, applicant submits that the combination of resolution, display size and number of channels is not comparable to the quality elements of the quality menu. Hence, for the remarks made above in conjunction with the previously submitted arguments submitted in response to the rejection of the claims, applicant submits that the combination of the cited references fails to disclose at least one material element recited in the claims.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations. However, the US Supreme Court in *KSR v. Teleflex* (citation omitted), held that the teaching, suggestion and motivation test (TSM) is merely to be used as a helpful hint in determining obviousness and a bright light application of such a test is adverse to those factors for determining obviousness enumerated in the *Graham v. John Deere* (i.e., the scope and content of the prior art, the level of ordinary skill in the art, the differences between the claimed invention and the prior art and objective indicia of non-obviousness).

In this case, the combination of the cited references fails to disclose at least one material element recited in each of the independent claims and thus, the combination of the cited references cannot be said to render obvious the subject matter recited in the independent claims.

With regard to the remaining claims, these claims depend from a corresponding one of the independent claims and, hence, are also allowable by virtue of their dependency upon an allowable base claim.

Notwithstanding the remarks made herein, applicant has elected to further recite that the quality menu includes entries “associated with different media types.” No new matter has been added. Support for the amendment may be found at least on page 7, lines 5-13. (“...thus the corresponding menu includes the following options: A, using the audio with very high quality to express the director annotation, at the bit rate of 256Kbps; B, using the audio with very poor quality to express the director annotation, at the bit rate of 64Kbps; C, using the subtitles based on text to express the director annotation, at the bit rate of 20Kbps, so that the network server may select automatically from the menu to download information in conformance with the current bandwidth to implement the seamless playback when receiving the current network connection bandwidth”).

Even assuming that the Office maintains the assertion that the resolution, display size and number of channels is comparable to the quality, recited in the claims, the resolution, display size and number of channels are associated with the player and not the media type.

Accordingly, the combination of the cited references fails to disclose all the elements recited in the claims.

For the amendments made to the claims and for the remarks made herein, applicant submits that the reasons for the objections and rejections of the claims have been overcome and withdrawal of same is respectfully requested. The prompt issuance of a Notice of Allowance is expressly requested.

Applicant denies any statement, position or averment stated in the Office Action that is not specifically addressed by the foregoing. Any rejection and/or points of argument not addressed are moot in view of the presented arguments and no arguments are waived and none of the statements and/or assertions made in the Office Action is conceded.

Applicant makes no statement regarding the patentability of the subject matter recited in the claims prior to this Amendment and has amended the claims solely to facilitate expeditious prosecution of this patent application. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by the originally filed claims, as presented prior to this Amendment, and any additional claims in one or more continuing applications during the pendency of the instant application.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at the telephone given below.

No fees are believed necessary for the timely filing of this paper.

Respectfully submitted,
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